

1 AMENDMENT TO SENATE BILL 1379

2 AMENDMENT NO. _____. Amend Senate Bill 1379 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Environmental Protection Act is amended
5 by adding Sections 39.6 and 44.5 and amending Section 42 as
6 follows:

7 (415 ILCS 5/39.6 new)

8 Sec. 39.6. Compliance Record.

9 (a) Before issuing or renewing any permit the Agency may
10 consider the previous history of compliance or noncompliance
11 with this Act by the applicant and any parent corporation,
12 subsidiary, or other entity related to the applicant by
13 ownership or control. If the applicant (or any parent
14 corporation, subsidiary, or other entity related to the
15 applicant by ownership or control) has a recent history of
16 noncompliance with this Act, the Agency may attach special
17 conditions to the permit, designed to promote future
18 compliance. The Agency may deny a permit on the grounds that
19 the prospective owner or operator (or any parent corporation,
20 subsidiary, or other entity related to the applicant by
21 ownership or control) has a history of: (1) repeated
22 violations of federal, state, or local laws, regulations,

1 standards, or ordinances intended to protect the environment
2 in the operation of facilities or sites; or (2) conviction in
3 this or another state of any crime that is a felony under the
4 laws of this State, or conviction of a felony in a federal
5 court; or (3) proof of gross carelessness or incompetence in
6 its construction or operation of facilities or sites. The
7 Agency shall adopt permit application requirements and
8 procedures that are necessary and appropriate to carry out
9 the purposes of this Section.

10 (b) If the Agency determines that the applicant's
11 history (or the history of any parent corporation,
12 subsidiary, or other entity related to the applicant by
13 ownership or control) includes a finding within the last 5
14 years by the Board or a court of competent jurisdiction of 2
15 or more significant noncompliance violations, and if the
16 applicant can otherwise meet the requirements for issuance of
17 a permit under this Act, the Agency may condition the permit
18 by requiring the applicant to secure an environmental audit
19 by a qualified independent environmental auditor, as defined
20 by Board regulations, within 3 months of issuance of the
21 permit. The Board shall adopt regulations that define the
22 qualifications of an independent environmental auditor,
23 specify the scope of the audit and the content of the audit
24 report, and require that the audit report include a schedule
25 for implementation of the audit report's recommendations.
26 Upon approval by the Agency, the applicant shall implement
27 the recommendations of the audit report in accordance with
28 the schedule contained in the audit report. Section 52.2 of
29 this Act does not apply to an environmental audit report
30 imposed by the Agency under this Section.

31 (c) The Agency or applicant may appeal the audit
32 report's recommendations or implementation schedule in a
33 permit appeal before the Board.

34 (d) For purposes of this Section, the term "significant

1 noncompliance violation" means:

2 (1) a violation of this Act or regulations adopted
3 under this Act that causes, threatens, or allows the
4 release of any contaminant into the environment;

5 (2) a violation of any condition of any permit
6 issued by the Agency under this Act; or

7 (3) a violation of any order of the Board or any
8 court.

9 (e) The final audit report's recommendations shall be
10 published by the Agency on its web site.

11 (f) Nothing in this Section limits the Agency's
12 authority under subsection (i) of Section 39 of this Act.

13 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

14 Sec. 42. Civil penalties.

15 (a) Except as provided in this Section, any person that
16 violates any provision of this Act or any regulation adopted
17 by the Board, or any permit or term or condition thereof, or
18 that violates any determination or order of the Board
19 pursuant to this Act, shall be liable to a civil penalty of
20 not to exceed \$50,000 for the violation and an additional
21 civil penalty of not to exceed \$10,000 for each day during
22 which the violation continues; such penalties may, upon order
23 of the Board or a court of competent jurisdiction, be made
24 payable to the Environmental Protection Trust Fund, to be
25 used in accordance with the provisions of the Environmental
26 Protection Trust Fund Act.

27 (b) Notwithstanding the provisions of subsection (a) of
28 this Section:

29 (1) Any person that violates Section 12(f) of this
30 Act or any NPDES permit or term or condition thereof, or
31 any filing requirement, regulation or order relating to
32 the NPDES permit program, shall be liable to a civil
33 penalty of not to exceed \$10,000 per day of violation.

1 (2) Any person that violates Section 12(g) of this
2 Act or any UIC permit or term or condition thereof, or
3 any filing requirement, regulation or order relating to
4 the State UIC program for all wells, except Class II
5 wells as defined by the Board under this Act, shall be
6 liable to a civil penalty not to exceed \$2,500 per day of
7 violation; provided, however, that any person who commits
8 such violations relating to the State UIC program for
9 Class II wells, as defined by the Board under this Act,
10 shall be liable to a civil penalty of not to exceed
11 \$10,000 for the violation and an additional civil penalty
12 of not to exceed \$1,000 for each day during which the
13 violation continues.

14 (3) Any person that violates Sections 21(f), 21(g),
15 21(h) or 21(i) of this Act, or any RCRA permit or term or
16 condition thereof, or any filing requirement, regulation
17 or order relating to the State RCRA program, shall be
18 liable to a civil penalty of not to exceed \$25,000 per
19 day of violation.

20 (4) In an administrative citation action under
21 Section 31.1 of this Act, any person found to have
22 violated any provision of subsection (o) of Section 21 of
23 this Act shall pay a civil penalty of \$1,500 for a first
24 offense or \$3,000 for a second or subsequent offense \$500
25 ~~for each violation of each such provision~~, plus any
26 hearing costs incurred by the Board and the Agency. Such
27 penalties shall be made payable to the Environmental
28 Protection Trust Fund, to be used in accordance with the
29 provisions of the Environmental Protection Trust Fund
30 Act; except that if a unit of local government issued the
31 administrative citation, 50% of the civil penalty shall
32 be payable to the unit of local government.

33 (4-5) In an administrative citation action under
34 Section 31.1 of this Act, any person found to have

1 violated any provision of subsection (p) of Section 21 of
2 this Act shall pay a civil penalty of \$1,500 for a first
3 offense and \$3,000 for a second or subsequent offense,
4 plus any hearing costs incurred by the Board and the
5 Agency. The penalties shall be deposited into the
6 Environmental Protection Trust Fund, to be used in
7 accordance with the provisions of the Environmental
8 Protection Trust Fund Act; except that if a unit of local
9 government issued the administrative citation, 50% of the
10 civil penalty shall be payable to the unit of local
11 government.

12 (5) Any person who violates subsection 6 of Section
13 39.5 of this Act or any CAAPP permit, or term or
14 condition thereof, or any fee or filing requirement, or
15 any duty to allow or carry out inspection, entry or
16 monitoring activities, or any regulation or order
17 relating to the CAAPP shall be liable for a civil penalty
18 not to exceed \$10,000 per day of violation.

19 (b.5) In lieu of the penalties set forth in subsections
20 (a) and (b) of this Section, any person who fails to file, in
21 a timely manner, toxic chemical release forms with the Agency
22 pursuant to Section 25b-2 of this Act shall be liable for a
23 civil penalty of \$100 per day for each day the forms are
24 late, not to exceed a maximum total penalty of \$6,000. This
25 daily penalty shall begin accruing on the thirty-first day
26 after the date that the person receives the warning notice
27 issued by the Agency pursuant to Section 25b-6 of this Act;
28 and the penalty shall be paid to the Agency. The daily
29 accrual of penalties shall cease as of January 1 of the
30 following year. All penalties collected by the Agency
31 pursuant to this subsection shall be deposited into the
32 Environmental Protection Permit and Inspection Fund.

33 (c) Any person that violates this Act, or an order or
34 other determination of the Board under this Act and causes

1 the death of fish or aquatic life shall, in addition to the
2 other penalties provided by this Act, be liable to pay to the
3 State an additional sum for the reasonable value of the fish
4 or aquatic life destroyed. Any money so recovered shall be
5 placed in the Wildlife and Fish Fund in the State Treasury.

6 (d) The penalties provided for in this Section may be
7 recovered in a civil action.

8 (e) The State's Attorney of the county in which the
9 violation occurred, or the Attorney General, may, at the
10 request of the Agency or on his own motion, institute a civil
11 action for an injunction to restrain violations of this Act.

12 (f) The State's Attorney of the county in which the
13 violation occurred, or the Attorney General, shall bring such
14 actions in the name of the people of the State of Illinois.
15 Without limiting any other authority which may exist for the
16 awarding of attorney's fees and costs, the Board or a court
17 of competent jurisdiction may award costs and reasonable
18 attorney's fees, including the reasonable costs of expert
19 witnesses and consultants, to the State's Attorney or the
20 Attorney General in a case where he has prevailed against a
21 person who has committed a wilful, knowing or repeated
22 violation of the Act.

23 Any funds collected under this subsection (f) in which
24 the Attorney General has prevailed shall be deposited in the
25 Hazardous Waste Fund created in Section 22.2 of this Act. Any
26 funds collected under this subsection (f) in which a State's
27 Attorney has prevailed shall be retained by the county in
28 which he serves.

29 (g) All final orders imposing civil penalties pursuant
30 to this Section shall prescribe the time for payment of such
31 penalties. If any such penalty is not paid within the time
32 prescribed, interest on such penalty at the rate set forth in
33 subsection (a) of Section 1003 of the Illinois Income Tax
34 Act, shall be paid for the period from the date payment is

1 due until the date payment is received. However, if the time
2 for payment is stayed during the pendency of an appeal,
3 interest shall not accrue during such stay.

4 (h) In determining the appropriate civil penalty to be
5 imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or
6 (b)(5) of this Section, the Board shall in every adjudicated
7 case following an evidentiary hearing ensure that the
8 economic benefits of the violation shown to have been
9 realized by the violator do not exceed the monetary value of
10 the penalties and any supplemental environmental projects
11 imposed for the violation, and it is authorized to consider
12 any matters of record in mitigation or aggravation of
13 penalty, including but not limited to the following factors:

- 14 (1) the duration and gravity of the violation;
- 15 (2) the presence or absence of due diligence on the
16 part of the violator in attempting to comply with
17 requirements of this Act and regulations thereunder or to
18 secure relief therefrom as provided by this Act;
- 19 (3) any economic benefits accrued by the violator
20 because of delay in compliance with requirements;
- 21 (4) the amount of monetary penalty which will serve
22 to deter further violations by the violator and to
23 otherwise aid in enhancing voluntary compliance with this
24 Act by the violator and other persons similarly subject
25 to the Act; and
- 26 (5) the number, proximity in time, and gravity of
27 previously adjudicated violations of this Act by the
28 violator.

29 (i) In this Section, "supplemental environmental
30 projects" means environmentally beneficial projects that a
31 respondent agrees to undertake in settlement of an
32 environmental enforcement action, but which the respondent is
33 not otherwise legally required to perform.

34 (Source: P.A. 90-773, eff. 8-14-98; 91-82, eff. 1-1-00.)

1 (415 ILCS 5/44.5 new)

2 Sec. 44.5. Violator list.

3 (a) Beginning one year after the effective date of this
4 amendatory Act of the 93rd General Assembly, the Agency shall
5 at least annually update and publish on its web site, or by
6 other appropriate means, a list of violators who have been
7 found within the last 5 years by the Board or a court of
8 competent jurisdiction to have caused, threatened, or allowed
9 2 or more significant noncompliance violations of this Act or
10 Board regulations, or have been convicted of a crime under
11 this Act. The date of a significant noncompliance violation
12 shall be deemed to be the date of the Board or court order
13 finding the violation.

14 (b) Within one year after the effective date of this
15 amendatory Act of the 93rd General Assembly, the Board shall
16 promulgate rules providing that, to the extent allowed by
17 law, a person listed on the Agency's violator list under
18 subsection (a) and any parent corporation, subsidiary, or
19 other entity related to the person by ownership or control
20 shall be prohibited from receiving any State contract for as
21 long as it continues to be listed by the Agency as having
22 within the last 5 years been found by the Board or a court of
23 competent jurisdiction to have caused, threatened, or allowed
24 2 or more significant violations of this Act or Board
25 regulations, or having been convicted of a crime under this
26 Act. The Board rules may allow a person to be removed from
27 the violator list if the person shows that it has come into
28 compliance with the Act. Further, the rules shall provide
29 that a person listed on the violator list shall not be
30 prohibited from receiving a State contract if it is shown
31 that there is no practical alternative to the State to
32 contracting with that person.

33 (c) For purposes of this Section, the term "significant
34 noncompliance violation" means: (1) a violation of this Act

1 or regulations adopted under this Act that causes, threatens,
2 or allows the release of any contaminant into the
3 environment; (2) a violation of any condition of any permit
4 issued by the Agency under this Act; or (3) a violation of
5 any order of the Board or any court.

6 Section 99. Effective date. This Act takes effect upon
7 becoming law."